



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/159077

PRELIMINARY RECITALS

Pursuant to a petition filed July 14, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 07, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether Milwaukee Enrollment Services (the agency) correctly considered Petitioner's expenses in determining her Foodshare allotment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED] |
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Simone Johnson, Income Maintenance Worker Advanced
Milwaukee Enrollment Services
1220 W. Vliet St., Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The Petitioner completed a renewal on June 4, 2014. (Exhibit 10)
3. On June 30, 2014, the agency sent the Petitioner a notice indicating that effective July 1, 2014, her FoodShare benefits would be \$29.00 per month.

4. On July 3, 2014, the agency sent Petitioner a notice indicating that effective August 1, 2014 she would be receiving \$29.00 per month in Foodshare benefits. (Exhibit 14)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on July 5, 2014.
6. The Petitioner is over age 60. (Exhibit 9)
7. The Petitioner lives alone. Her sole source of income is Social Security Retirement Income in the amount of \$992.00 per month. (Testimony of Petitioner; Exhibit 14)
8. Petitioner pays rent in the amount of \$278.00 per month. Heat is included in her rent, but she pays a telephone utility and electric expense. (Testimony of Petitioner; Exhibit 14)
9. Petitioner has a recurring medical expense for medications from [REDACTED] in the amount of \$31.91 per month. (Exhibit 18)

DISCUSSION

Petitioner filed an appeal because she contends her FoodShare allotment is insufficient. However, allotment determinations are based entirely upon an individual's income.

To receive FoodShare benefits a household must have gross income at or below 200% of the Federal Poverty Level (FPL), though the gross income test does not apply where a household has a member over age 60. *7 Code of Federal Regulations (CFR), §273.9(b); FoodShare Wisconsin Handbook (FSH), § 1.1.4.* Once a household passes the gross income limit, the household is tested to see if its income is below certain net income limits. *Id.* The agency must budget all income of the FS household, including all earned and unearned income. *7 CFR § 273.9(b); FoodShare Wisconsin Handbook (FSH), § 4.3.1.*

Eligibility determinations are based upon prospectively budgeted monthly income using estimated amounts. *FSH, §4.1.1.*

Once a household passes the gross income test the following deductions are applied in determining the FoodShare allotment. (*FSH, at § 4.6*):

- (1) a standard deduction –

This is \$152 per month for a household of 1-3 people. *7 CFR § 273.9(d)(1)*:

- (2) an earned income deduction - which equals 20% of the household's total earned income, *7 CFR § 273.9(d)(2)*;
- (3) certain medical expenses – for medical expenses exceeding \$35 in a month for an elderly or disabled person, *7 CFR § 273.9(d)(3)*;
- (4) dependent care deduction for child care expenses, *7 CFR § 273.9(d)(4)*; and
- (5) shelter and utility expenses deduction the deduction is equal to the excess expense above 50% of net income remaining after other deductions. *7 CFR § 273.9(d)(5).*

Per Ops Memo 14-16, effective April 28, 2014, heating and utility allowances changed:

For individuals who have a verified heating expense, the heating standard utility allowance (HSUA) is \$450 per month. *Due to policy changes, the*

Petitioner no longer receives the HSUA, because heat is included in her rent.

A Limited Utility Allowance (HUA) of \$313 is allowed for individuals who are obligated to pay two or more non-heating utility expenses such as phone, water, sewer, electricity, cooking fuel or trash. *Because the Petitioner does not have a heating expense, and pays for telephone and an electric bill, she may only receive the HUA deduction.*

An Electric Utility Allowance (EUA) of \$153 is permitted for individuals obligated to pay only a non-heat electric bill.

The Cooking Fuel Utility Allowance (FUA) of \$32 is permitted if obligated to pay for only fuel used for cooking that is not also used for heating.

The Water Utility Allowance (WUA) of \$80 is for individuals only obligated to pay for a water bill, a sewer bill, septic tank installation/maintenance or wastewater treatment bill.

The Phone Utility Allowance of (PUA) \$30 is for individuals only obligated to pay a telephone bill, including a cellular phone bill.

The Trash Utility Allowance (TUA) of \$18 is for those obligated to pay only a trash or garbage bill.

There is a cap of \$478.00 on the shelter cost deduction, *unless* a household has an elderly, blind or disabled member.

FSH, §§ 4.6.7.1 and 8.1.3.

The term 'disabled' is a term with a definition as to the FoodShare program:

3.8.1.1 EBD Introduction

An elderly individual is a food unit member age 60 or older.

A disabled individual is a food unit member who receives disability or blindness benefits from any of these programs: [SSA](#), [MA](#), [SSI](#) or SSI related MA, Railroad Retirement Board ([RRB](#)).

FSH, §3.8.1.1.

MEDICAL EXPENSES

A medical expense can be used as a deduction when:

1. The expense was incurred either before or during the current certification period,
2. The individual is still obligated to pay the expense, AND
3. The expense was not previously allowed as a deduction for a prior certification period.

FSH 4.6.4.1 Allowable Medical Expenses

The Petitioner submitted a bill dated July 13, 2014, from State Collection \$975.99. However, it does not indicate whether the debt is for medical expenses and as such cannot be used as a deduction.

The Petitioner submitted another bill from State Collection for \$504.55, which indicates it is for bills from [REDACTED] Group, but the bill is dated June 14, 2013. It is unclear whether those bills are still outstanding. As such, they cannot be used as a deduction at this time.

The bill submitted from [REDACTED] for a Dr. Bogunovic is from 2010 and again, it is unclear whether that bill is still outstanding. Petitioner submitted a list of charges from [REDACTED], but the creditors are unnamed and as such, there is no verification that the charges are medical expenses.

Finally, the Petitioner submitted a bill from [REDACTED] for \$660 for a hearing aid dated January 16, 2014. It is unclear from the record whether this bill has already been used as a medical expense for a prior certification period. However, the Budget Printout for July 1, 2014, clearly shows the expense was not allowed for that month. (Exhibit 18) The agency will need to review its records.

It is undisputed that Petitioner has a monthly expense of \$31.91 per month for prescription medication.

SHELTER AND UTILITY DEDUCTION

The Petitioner submitted a bill for renter's insurance. However, renter's insurance is not an allowable shelter deduction. *FSH §4.6.7.2*

CONCLUSIONS OF LAW

The agency has not established that it correctly applied allowable medical expense deductions.

THEREFORE, it is

ORDERED

That the agency review its records to determine whether it has already used the hearing aid deduction of \$660 in a prior certification period.

If the hearing aid deduction has not already been applied in a prior certification period, the agency shall apply the deduction to Petitioner's Foodshare budget effective July 1, 2014 forward and re-determine her FoodShare allotment.

The agency shall then issue to Petitioner a new notice of decision, advising her of its new determination.

The agency shall take all administrative steps necessary to complete these tasks within 10-days of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

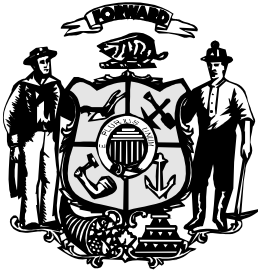
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 5th day of September, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on September 5, 2014.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability